IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5470 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH MANJI THAKKAR GAYATRINAGAR SOCIETY

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 25-4-2000 passed by the District Magistrate, Kutch-Bhuj, and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. The petitioner has challenged the order of detention on various grounds. The main ground is delay in considering representation and also non-application of mind on part of the detaining authority. The petitioner has categorically contended in his petition that the petitioner sent his representation to all concerned authorities through jail on 7-6-2000 and the District Magistrate, Kutch-Bhuj rejected the same vide his communication dated 29-6-2000, whereas prior to that the order of detention approved by the State Government on 3-5-2000 and, therefore, the representation was not required to be decided by the District Magistrate and it was required to be forwarded to the State Government, but instead of doing so, the authority-District Magistrate decided the representation which is not legal and for which learned counsel for the petitioner has drawn attention of this Court to decision in the case of Navalshankar Ishwarlal Dave and another v. State of Gujarat, AIR 1994 SC 1496 and submitted that the action on part of the detaining authority was beyond authority, which has affected the right of the detenu of making an effective representation. In any case, the petition, therefore, deserves to be allowed and may be allowed.

4. The detaining authority considered the representation and rejected the same on merits. The detaining authority, in doing so, has exceeded its authority, as once the detention is approved by the Government, the detaining authority become functus officio and it has no authority to revoke or rescind or modify the order. All that the detaining authority can do is to forward the representation to the Government for appropriate decision. In this regard, the decision in the case of Navalshankar Ishwarlal Dave and another (supra) can profitably be considered.

5. In view of the above, the petition is allowed. The impugned order of detention dated 25-4-2000 against the detenu is hereby quashed. The petitioner-detenu Dinesh Manji Thakkar is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai